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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

THE INDIANAPOLIS & VINCENNES RAILROAD COMPANY, Plaintiff in Error,

vs.

VICTOR M. BACKUS, TREASURER OF MARION COUNTY, INDIANA, AND OTHERS, Defendants in Error.

STATEMENT.

WM. B. BURFORD, PRINTER, INDIANAPOLIS.

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STATEMENT.

The Indianapolis & Vincennes Railroad is 133 miles in length, lying wholly within the State of Indiana, and connecting the cities of Indianapolis and Vincennes.

It is operated and practically owned by the Pennsylvania Company, as is shown by the lease introduced in evidence by the plaintiff in error (record, pages 105–107), dated December 28, 1878, by the terms of which the Pennsylvania Company is to have absolute control of said railroad for a period of ninety-nine years. And it also appears from this lease, and other evidence upon that subject, that any sum which is to be paid by the Pennsylvania Company in consideration for the use of the property is payable to the Pennsylvania Company.

The Indianapolis & Vincennes Railroad is operated in connection with the Pennsylvania lines, including the P., C., C. & St. L. Railroad, forming a part of one of the greatest and most valuable railroad systems in America.

Its railroad track and rolling stock was valued by the State Board of Tax Commissioners for the year 1891 at $2,684,491, being about $17,896 per mile (including side tracks). The evidence of Alex. McElevey, assistant comptroller of the Pennsylvania Company, introduced by plaintiff in error (record, page 116) shows that on the 1st day of April, 1891, the bonded indebtedness of the Indianapolis & Vincennes Railroad was as follows:

First mortgage bonded indebtedness	$3,102,000
Second mortgage bonded indebtedness	1,402,000
Total mortgage debt	$4,504,000
Add to this the paid-up capital stock of the Company	$1,402,000
And we have a total of paid-up capital stock and mortgage indebtedness	$5,906,000

Or, $39,373 per mile.

Attention is called to these figures because, according to all authorities on the questions under discussion, the amount of indebtedness supported by a railroad, together with the amount and value of its capital stock, are valuable *criteria* in estimating values.

The principal questions in this case as to the constitutionality of the revenue law of Indiana of 1891 are identical with those raised and discussed in the cases of the *C., C., C. & St. L. R. R. Co.* v. *Backus*, No. 908, and the *P., C., C. & St. L. R. R. Co.* v. *The Same*, No. 899, pending in this Court, and which have been fully discussed.

In this case, however, by the fifth and sixth assignments of error, the question is presented as to whether the State Board of Tax Commissioners exceeded its jurisdiction in making its assessment and valuation of plaintiff's "railroad track" and "rolling stock," by considering, estimating and taking into account, as important increments or elements of value of such "railroad track" and "rolling stock," the facts that the plaintiff's railroad was under lease to the Pennsylvania Company, and was operated in connection with the railway of the P., C., C. & St. L. Railway Company—both corporations of other States—and whether this plaintiff is by such action of said Board charged with and taxed for part of the value of the

franchises, terminals, transportation facilities, properties and property rights of said corporations of other States engaged in interstate traffic and transportation; and whether the law which authorizes such alleged importations of value is valid.

VALUATION OF THE ROAD.

This Court is informed by counsel for plaintiff in error that a State Board of Equalization, acting under a different law, in 1890, assessed the railroad track and rolling stock of this railroad at $811,000, an amount less than half that assessed by the State Board of Tax Commissioners when acting under the law of 1891. The record does not disclose these facts thus presented by counsel. Indeed, he admits that he does not speak by the record in this regard, but insists that the official printed report of the proceedings of, and the assessments and valuations made by, the State Board of Equalization is a public document, a public official record of the State of Indiana to which these plaintiffs in error have full right to refer, whether offered in evidence or not.

Waiving the question, for the time, as to the propriety of quoting from this document, we beg to call the attention of the Court to the following facts, which are readily shown by the published reports referred to.

Prior to the enactment of the law of 1891 Indiana was the paradise of tax dodgers. Farm lands easily worth $60 to $75 per acre were valued for taxation at $12 to $20 per acre, and great railroads like that of the plaintiff in error, traversing the richest and most populous part of the State, so valuable that its owners could go upon the market and borrow upon it more than four and a half millions of dollars, were returned at the beggarly sum of about $600,000, and actually assessed at $811,000.

The result of this long-continued practice of evading taxation is partly illustrated in schedule No. 2, returned by the Pennsylvania Company for the I. & V. Railroad property, to the State Board in 1891 (record, p. 54), wherein the officers of that company declare the average value of their locomotives is $1,952; passenger coaches, $1,200; baggage, mail and express cars, $600; box cars, $210; stock cars, $195, etc., as well as in schedule No. 1 (record, p. 52), wherein the main track of the

main line, supporting a mortgage of over $30,000 per mile, is returned as of the value of $3,725 per mile.

The law of 1891 was enacted to remedy these evils, and the published report referred to by counsel will show that, to some extent, they were remedied, not only as to railroads, but as to all other classes of property in the State.

Assuming that the valuation of this railroad in 1890, by the old Board under the old law, is properly, or may properly be, brought before the Court, how does the fact that the old valuation was more than doubled by the new Board under the new law affect the validity of the latter valuation?

In the case of *R. R. Co.* v. *People*, 127 Ill. 627, the Supreme Court of that State, in the consideration of this very question, said:

"The facts that appellant's property was, in 1886, assessed at $234,192, and that the same property was assessed in 1887 at $418,484, do not establish fraud. *The natural inference and conclusion would be either that the assessment for 1886 was for less than its cash value, or that the property had increased in value, or both*" (p. 635).

It has been held repeatedly by this Court that it will not review or correct assessments of taxes made by State tribunals, even though they may appear to be erroneous and excessive.

Kelly v. *Pittsburgh*, 104 U. S. 78.

State Railroad Tax Cases, 92 U. S. 575.

Missouri v. *Lewis*, 101 U. S. 22.

In this case, however, the evidence fairly justifies the action of the State Board.

It has been repeatedly held that the assessing officers are in nowise bound by the return of the tax-payer.

In *St. L., V. & T. H. R. R.* v. *Surrell*, 88 Ill. 535, which was a railroad tax case, in which the action of the State Board in making the assessment was assailed, the Court in discussing this question said:

* * * "The law does not provide that the return shall be *prima facie* or conclusive evidence of anything. * * * It has never been supposed that it is essential to a valid assessment that township or other Assessors shall hear evidence in fixing the taxable value of property. On the contrary it is believed that they almost uniformly act upon their own knowledge and individual judgment as to its worth."

Case v. *Dean*, 16 Mich. 12.

Railway Co. v. *Riley Co.*, 20 Kan. 141.

Sterling Gas Co. v. *Higby*, 134 Ill. 568.

In State R. R. Tax Cases, 92 U. S. 575, Justice Miller said on this subject (p. 610):

"As we do not know on what evidence the Board acted in regard to these railroads, or whether they did not act on knowledge they possessed themselves, and as all valuation of property is more or less a matter of opinion, we see no reason why the opinion of this Court or the Circuit Court should be better, or should be substituted for that of the Board, whose opinion the law has declared to be the one to govern in this matter."

THE IMPORTATION OF VALUES.

It is insisted by counsel that the State Board of Tax Commissioners exceeded its jurisdiction in that it imported into its valuation of the "railroad track" and "rolling stock" of the I. & V. R. R. Co. values of the franchises, terminals, transportation facilities, properties and property rights of the Pennsylvania Company and the P., C., C. & St. L. R. R. Co.

Now upon what evidence, as shown by the record is this charge predicated?

In the first place the law confers jurisdiction upon the State Board to assess values upon the "railroad track" and "rolling stock." The action of the Board will be aided by the presumption that it did its duty, and by the further conclusive presumption that its record speaks the truth.

The assessment of the I. & V. R. R. Co.'s property as shown by the record of the State Board appears in the record here on pages 48 and 49. It is in three tables, as required by the statute.

These tables are preceded by the following record of the proceedings of the Board:

"INDIANAPOLIS, IND., TUESDAY, September 8, 1891, 10 A. M.

"The State Board of Tax Commissioners met pursuant to adjournment. The State Board of Tax Commisrioners having had under consideration the assessment of the several railroads in the State, the following valuations per mile of the various roads within this State, and the improvements on the right of way, and in daily use by such railroads, was unanimously agreed upon, and the same was ordered to be spread upon the record, and to stand as the assessment of the railroad property denominated railroad track, rolling stock and improvements on right of way, for the year 1891, which assessment is in the words and figures, to wit:

"TABLE No. 1.

"Value per mile of main track, second main and side tracks, rolling stock, and improvements of right of way, and in daily use for railroad purposes, as fixed by the State Board of Tax Commissioners, for the year 1891:

"INDIANAPOLIS & VINCENNES.

"116.92 miles main track, per mile	$19,400
"10.59 miles side track, per mile	2,500
"116.92 miles rolling stock, per mile	1,300
"Improvements on right of way	9,945"

Then follows a similar statement as to the valuation of the two branches of the road.

Table No. 2 has the following caption:

"Table of Railroads in Indiana by Counties, and Value of Main Track, Second Main Track, Side track, Rolling Stock and Improvements on Right of Way assessed by the State Board of Tax Commissioners in 1891."

Then follows a separate valuation of the main track, side track, rolling stock and improvements of right of way of the Indianapolis & Vincennes Railroad in each of the counties through which the road passes.

Table No. 3 has the following caption:

"Table of Main Track, Second Main Track, Side Track, Rolling Stock, Improvements on Right of Way of Railroads in Indiana for the year 1891, as valued by the State Board of Tax Commissioners."

NAMES OF RAILROADS.	Main Track.			Second Main.			Side Track.			Rolling Stock.			Improvement on Right of Way.	Total Assessment.	Average Value Per Mile.
	Miles.	Per Mile.	Total.	Miles.	Per Mile.	Total.	Miles.	Per Mile.	Total.	Miles.	Per Mile.	Total.			
Indianapolis & Vincennes	116.92	$19,400	$2,268,248	. .	. . .	. . .	10 59	$2,500	$26,475	116.92	$1,300	$151,996	$9,935	$2,456,654	$21,011
Island Coal Branch I & V	11.88	11,700	138,996	. .	. . .	. . .	6 83	3,000	20,490	11.88	1,300	15,444	. . .	174,930	14,724
Gosport Branch I & V	4.31	10,900	46,979	.	. . .	. . .	.13	2,500	325	4.31	1,300	5,603	. . .	52,907	12,275

The Court will observe the recital in the record here that the above tables appear in the published report of the State Board of Tax Commissioners, as follows: Table 1, on pages 81 and 86; Table 2, on pages 188 to 209, and Table 3 on pages 184 and 185.

Now, on page 213 of the printed report, there appears, as an explanatory note, the following: (Record, page 50.)

"Making liberal allowances for all proper deductions, the State Board of Tax Commissioners has fixed the values of the respective railroads and parts of roads in the State of Indiana for taxation on the 1st day of April, 1891, as hereinbefore set forth.

"In arriving at the *basis* for the estimate of said values, the Board has considered the cost of construction and equipment of said roads, the market value of the stocks and bonds, and the gross and net earnings of each of said roads, and all other matters appertaining thereto that would assist the Board in arriving at a true cash value of the same."

Counsel for plaintiff in error have insisted throughout this case that the above was the certificate of the State Board. It is, and purports to be, nothing more than a note of explanation. The certificates proper, both of the Governor and Auditor of State, are set out in the record here at pages 50 and 51, and appear at the end of the published report of the State Board at page 222. The certificates set forth that the assessments of railroad property were upon "railroad track," "rolling stock" and "improvements on right of way," as provided by the statute. The record of the State Board of Tax Commissioners is one which by law it is required to make and publish.

It shows conclusively that the Board assumed no jurisdiction to assess anything pertaining to railroad property except the "railroad track," "rolling stock" and "improvements on right of way," and, in fact, assessed that and that only.

This record of the Board is to be considered, in all its parts, as a whole, as any other public record, and no mere play upon words, or singling out of a sentence here, or a phrase there, will be allowed to control its plain meaning, when read as an entirety.

Now, in a collateral proceeding counsel for plaintiff in error undertake to assail this record, made by this tribunal in pursuance to the requirements of the law, and contradict the recitals therein which affirmatively show that the Board in nowise transcended its powers, or overstepped its jurisdictional limits.

The only evidence relied upon by the plaintiff in error to overcome the recitals of the record of the Board on this subject is that of Hon. Claude Matthews, which is set out on page 121 to 124 of the record herein. Governor Matthews' testimony on this subject is as follows:

Q. "State whether or not the State Board of Tax Commissioners, in making and fixing the valuation and assessment of the railroad of plaintiff corporation for the year 1891, valued said railroad higher by reason of the fact that the railroad of the plaintiff was under lease to the Pennsylvania Company, and was operated in connection with the railway of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, than said Board valued said road apart from its said relationship to said corporation?"

A. "We assessed the railroad track and rolling stock of plaintiff in the condition in which it actually was, and took into consideration the circumstances stated in the question; had the plaintiff's road been entirely disconnected from the Pennsylvania Company and the P., C., C. & St. L. Railway Company, the assessment would not have been placed as high as it was."

Q. "State what amount in dollars, per mile, was added to the valuation of plaintiff's railroad by the State Board of Tax Commissioners by reason of said relationship between the plaintiff and the said corporations, the Pennsylvania Company, and the P., C., C. & St. L. Railroad Company?"

A. "Nothing; the value of the railroad track and rolling stock of plaintiff, independent of the connections named in the question, was not assessed nor considered."

Q. "State how and why said relationship between the plaintiff and the said corporations, the Pennsylvania Company, and the P., C., C. & St. L. Railway Company was considered by the State Board as giving to the plaintiff's railroad such additional value."

A. "As stated in the answer to the preceding question, no additional value was assessed on that account. The assessment was made upon the railroad track and rolling stock of plaintiff as it was, and not as it was not."

We are quite content to leave with the Court without argument, the question as to whether the record of the highest taxing tribunal in the State—a record required by law to be kept,

will be permitted to be explained, varied, qualified or contradicted by the testimony of a member of that tribunal. He might testify intelligently as to what he considered, and as to the operation of his mind in the exercise of his individual judgment, but he would, as we think, be hardly competent to speak for the Board, and as to the facts and circumstances which operated upon the minds of the other individual members in the formation of any opinions upon which they acted.

The reason for the rule that a tribunal of this kind must speak by its record is well exemplified in this instance. But conceding, for the sake of the argument, that the evidence of Gov. Matthews is competent for the purpose for which it was introduced, what does it show?

First. That the State Board found the Indianapolis & Vincennes Railroad, not an independent line, but a part of a great railway system connecting the cities of Chicago, St. Louis, Louisville and Indianapolis with New York, Philadelphia, Baltimore and Washington—one of the most complete and perfect systems in the world—and that they assessed it as they found it, "as it was, and not as it was not."

As a part of this system its relationship with the Pennsylvania Company was of the closest character. By reference to its schedules 1, 2 and 4, returned to the State Board (pages 52, 54 and 55 of Record), it will be observed that they were made out, and furnished by the Pennsylvania Company.

The caption of schedule 2 is as follows: "Schedule No. 2, showing the property denominated 'rolling stock,' whether owned, operated or leased in whole or in part by the Pennsylvania Company, operating the Indianapolis & Vincennes Railroad Company on the 1st day of April, 1891," etc.

Schedule No. 1 has the following caption: "Schedule No. 1, showing the property denominated 'railroad track' belonging to or controlled by the Pennsylvania Company, operating the Indianapolis & Vincennes Railroad Company on the 1st day of April, 1891," etc.

In fact, under the statute the entire property could have properly been valued as the property of the Pennsylvania Company, and the taxes against the same charged to and collected from that corporation. By the terms of its ninety-nine years' lease (Record, pages 105–6), the Pennsylvania Company binds itself to pay out of the income of the property "all State

and National taxes and assessments now or hereafter lawfully levied or assessed thereon."

This was the relationship, which the State Board could not fail to observe, for it was shown upon the "face of the returns" made by the Pennsylvania Company.

In fixing the value upon this property, was the State Board required by the law to forget or ignore this relationship? Was it more valuable because of it?

If so, they were bound to give an increased value—not to any part of the Pennsylvania property, but to the property they were assessing.

The writer has in mind a railroad company, which some years ago owned a line of road, twenty-five miles in length, connecting two country towns in Indiana. It was of little value. Afterwards another company built a road from its western terminus to St. Louis, and still another company constructed a line from its eastern terminus to Toledo. The original road, formerly so insignificant and of such little value, came to be a most valuable property. Of course its valuation for taxation was increased fourfold.

Its value had been increased because of the connection with the other roads.

Now, according to the argument of the plaintiff in error here, the increase by the assessing officers in its valuation was clearly in violation of the Federal Constitution, for the reason that they had considered its connection and relationship with the other roads, had imported values therefrom, thereby assessing for taxation the instrumentalities of interstate commerce.

Following the alleged reasoning of learned counsel here, they should not have looked to its increased facilities for earning money, for did not these facilities grow out of its connection with other roads? and would they dare to risk the importation of values, by considering the road as it was originally, beginning and ending at insignificant towns in the interior of the State?

A farm in a wilderness is of little value, but as roads are built, ditches made, the surrounding country cleared up and beautified, the value of the farm will be increased, though no money or labor is expended on it. This value is "imported," but it nevertheless exists, and must be assessed and taxed.

A turnpike road may be so situated as to have little travel, and be of little value. If afterward other turnpikes are built by other companies connecting with it, bringing to it large travel and a lucrative business, its value is thereby largely increased. Should its assessment for taxation remain the same year after year because the fact of its increase in value could only be arrived at "by considering, estimating and taking into account as important increments or elements of value" the fact that other turnpikes had been connected with it?"

The Indianapolis & Vincennes Railroad as a local road, with no physical or business connection at either end of its line, might be of little value, yet if it should be connected with other roads, become part of a great railway system, so that its cars, when loaded at its stations, could, without change or delay, be transported across the continent, might not its value be increased by such change? And if the assessing board, charged with the duty of assessing property according to value, should, in the exercise of an honest judgment, fix an increased valuation upon it, because of the changed condition in which they found it, would they be guilty of such a serious infraction of the National Constitution as to invalidate their action?

Section 95 of the statute under discussion makes provision for the assessment of lands and the improvements and buildings thereon. It requires the Assessor "to value them at their full cash value, * * * *taking into consideration* the fertility of the soil, the vicinity of the same to railroads, macadamized roads, clay roads, gravel roads, turnpike roads, State or county roads, cities, towns, villages, navigable rivers, water privileges on the same or in the vicinity of the same, the location of the route of any canal or canals, with any other local advantages of situation."

After reading the ponderous brief of counsel for plaintiff in error, it is positively frightful to contemplate the enormous "importation of increments and elements of value" enjoined by this section. For if the Assessor must consider and take into account all these things, and by reason thereof add to the value of the land, is he not, under the National Constitution, importing values?

And if he "considered" a railroad or canal which chanced to cross the State line, and for that reason added to the value

of the land, would he not be venturing dangerously near to the assessment of the instrumentalities of interstate commerce?

The Supreme Court of the State of Indiana, in the case of *R. R. Co.* v. *The State, ex rel. McCarty*, 25 Ind. 177, in considering a section of the tax law of 1859, which required the assessing officer to take into consideration certain elements of value, in assessing railroad property, said:

"The act further provides that, in making the estimate of the value of the road, 'the appraisers shall take into consideration, in addition to the rate prescribed for the valuation of real estate, the location of the road for business, the competition of other roads, its earnings above current expenses and repairs, its condition for present and future business, so as to enable them to arrive at the actual present value of such road, independent of what it cost or the amount of its indebtedness.' It is objected that this requires a special method of appraising the real estate of railroad companies, and contravenes the provision of the Constitution last cited.

But the Constitution does not require a uniform method of valuation of property, but only 'such regulations as shall secure a just valuation for taxation of all property, both real and personal.' The Legislature must use a discretion as to the best method of securing a just valuation of property, and unless the method adopted is clearly inadequate to secure that result, we can not question its action. The elements which make up the value of a railroad are not identical with those that give value to other property, and it is certainly proper to take into account, in estimating such value, every consideration named in the statute. Indeed, it seems to us that the direction was hardly required, as an intelligent appraiser would naturally give weight to all these things in making an estimate of the value of the railroad."

This construction of the Constitution of Indiana by the Supreme Court of that State on this subject is authoritative and controlling.

There is no other evidence in this record upon the subject under discussion. We submit that it is shown most conclusively by the record, as well as the oral testimony that the State Board assessed nothing that it had not ample power to assess, and that in its assessment its members exercised an honest judgment.

Aside from questions growing out of the admission and rejection of evidence by the trial Court, there is nothing left for discussion that has not already been fully discussed in the case of *The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co.* v. *Backus*, No. 899.

Not wishing to unnecessarily tax the patience of this Court, we will not repeat the arguments made in that case bearing upon the questions which are identical in the two cases. We

respectully pray an affirmance of the judgment of the Supreme Court of the State of Indiana.

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For the State of Indiana.
W. A. KETCHAM,
A. J. BEVERIDGE,
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Of Counsel.